

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Janine LaVigne, on behalf
of herself and all others
similarly situated,

Plaintiff,

Civil Action No. 1:15-cv-00934-WJ-LF

vs.

First Community Bancshares, Inc.;
First National Bank Texas;
DOES 1-10 inclusive,

Defendants.

DEPOSITION OF JANINE LAVIGNE

February 23, 2016
11:20 a.m.
612 First Street, NWk
Albuquerque, New Mexico 87102

PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE
this deposition was:

TAKEN BY: William S. Helfand, Esq.
Attorney for Defendants

REPORTED BY: Joe Jameson, NM CCR # 67
Kendra Tellez Court Reporting, Inc.
302 Silver Ave., SE
Albuquerque, New Mexico 87102

<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NEW MEXICO</p> <p>3 Janine LaVigne, on behalf 4 of herself and all others 5 similarly situated,</p> <p>6 Plaintiff,</p> <p>7 Civil Action No. 1:15-cv-00934-WJ-LF</p> <p>8 vs.</p> <p>9 First Community Bancshares, Inc.; 10 First National Bank Texas; 11 DOES 1-10 inclusive,</p> <p>12 Defendants.</p> <p>13 DEPOSITION OF JANINE LAVIGNE</p> <p>14 February 23, 2016 15 11:20 a.m. 16 612 First Street, NWk 17 Albuquerque, New Mexico 87102</p> <p>18 PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE 19 this deposition was:</p> <p>20</p> <p>21 TAKEN BY: William S. Helfand, Esq. 22 Attorney for Defendants</p> <p>23 REPORTED BY: Joe Jameson, NM CCR # 67 24 Kendra Tellez Court Reporting, Inc. 25 302 Silver Ave., SE Albuquerque, New Mexico 87102</p>	<p>3</p> <p>1 JANINE LAVIGNE</p> <p>2 was called as a witness and, having been first duly</p> <p>3 sworn, was examined and testified as follows:</p> <p>4 EXAMINATION</p> <p>5 By Mr. Helfand:</p> <p>6 Q. Ma'am, would you tell me your full legal name,</p> <p>7 please?</p> <p>8 A. Janine Louise LaVigne.</p> <p>9 Q. Ms. LaVigne, where do you live?</p> <p>10 A. 9000 Sunfish Avenue, Southwest, Albuquerque,</p> <p>11 New Mexico, 87121.</p> <p>12 Q. How long have you lived there?</p> <p>13 A. 17 years.</p> <p>14 Q. I'm an attorney for First National Bank of</p> <p>15 Texas. I represent them in connection with a lawsuit</p> <p>16 that you filed against them. Do you understand who I</p> <p>17 represent?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Great. I'm going to ask you some questions</p> <p>20 today about the claims that you have and some issues in</p> <p>21 the lawsuit that has been filed on your behalf and what I</p> <p>22 need you to do if you could, please, is give me truthful,</p> <p>23 accurate, reliable information in response to the</p> <p>24 questions I ask. Can you do that, please?</p> <p>25 A. Yes, sir.</p>
<p>2</p> <p>1 APPEARANCES</p> <p>2 For the Plaintiff:</p> <p>3 LEMBERG LAW</p> <p>4 1100 Summer Street, Third Floor</p> <p>5 Stamford, Connecticut 06905</p> <p>6 By: Stephen Taylor, Esq.</p> <p>7 staylor@lemborglaw.com</p> <p>8 For the Defendants:</p> <p>9 CHAMBERLAIN, HRDLICKA, WHITE</p> <p>10 WILLIAMS & AUGHTRY</p> <p>11 1200 Smith Street, Suite 1400</p> <p>12 Houston, Texas 77002</p> <p>13 By: William S. Helfand, Esq.</p> <p>14 bill.helfand@chamberlainlaw.com</p> <p>15 INDEX</p> <p>16 EXAMINATION OF JANINE LAVIGNE Page</p> <p>17 By Mr. Helfand 3</p> <p>18 Signature/Correction Page</p> <p>19 Certificate of Completion of Deposition</p> <p>20 EXHIBITS</p> <p>21 None</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>4</p> <p>1 Q. The best way I find to do that is if you</p> <p>2 would, please listen carefully to the question that is</p> <p>3 being asked. Think about the question, make sure before</p> <p>4 you say anything that you feel comfortable that you can</p> <p>5 provide truthful, accurate and reliable information in</p> <p>6 response to the question. Then and only then tell me or</p> <p>7 your lawyer if he asking questions, the answer to the</p> <p>8 question. Will you do that, please?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Thank you. Now, the other side of that is, if</p> <p>11 there is anything about the question that you don't</p> <p>12 understand, doesn't make sense to you, you need more</p> <p>13 information, you are just not sure that you can provide</p> <p>14 truthful reliable and accurate information, would you</p> <p>15 please tell whoever asks the question rather than answer</p> <p>16 a question that maybe you really don't understand? Can</p> <p>17 you do that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Based on what we discussed so far, if you</p> <p>20 answer a question that I have asked you or a question</p> <p>21 that your lawyer has asks you, without telling the person</p> <p>22 that asked the question there is a problem or something</p> <p>23 about the question that needs clarification, I'm going to</p> <p>24 assume that you understand the question and that I can</p> <p>25 rely on your answer. Does that make sense to you?</p>

<p>5</p> <p>1 A. Yes, sir, it does.</p> <p>2 Q. Great. Most of the time my questions will</p> <p>3 call for a yes or no answer but you may want to tell me</p> <p>4 more and I want to know everything that you think is</p> <p>5 responsive to the question. So, feel free to let me</p> <p>6 know. The only thing I ask, if the question calls for a</p> <p>7 yes or no, could you tell me the yes or no first and then</p> <p>8 tell me whatever else you want me to know? Could you do</p> <p>9 that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Sometimes you might not be done but I might</p> <p>12 think you are done. If that happens and you have more to</p> <p>13 say, would you say something or hold your hand up so I</p> <p>14 can stop talking and let you finish. Will you do that,</p> <p>15 please?</p> <p>16 A. Sure.</p> <p>17 Q. By the same token, sometimes you might think</p> <p>18 you know exactly what I'm going to ask before I even</p> <p>19 finish talking. What I would ask you to do, please, wait</p> <p>20 until you hear the whole question, first so you clearly</p> <p>21 know what question you are about to answer and second so</p> <p>22 this nice gentleman seated on your right can write down</p> <p>23 one person talking at a time. Can you do that for me,</p> <p>24 please?</p> <p>25 A. Yes.</p>	<p>7</p> <p>1 Q. You take a thyroid supplement?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Now, in the last two years has that affected</p> <p>4 your ability to think or remember or speak clearly at any</p> <p>5 time that you could tell?</p> <p>6 A. No.</p> <p>7 Q. Could I reasonably understand that the</p> <p>8 medicine you take for your thyroid shouldn't affect how</p> <p>9 you testify here?</p> <p>10 A. No, not at all.</p> <p>11 Q. Would I be correct in that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Great. Any other medications besides the</p> <p>14 thyroid medication?</p> <p>15 A. No, sir.</p> <p>16 Q. Have you always lived in Albuquerque?</p> <p>17 A. No, sir,</p> <p>18 Q. Where else have you lived?</p> <p>19 A. I was born in Waco, Texas and my father was in</p> <p>20 the military and we lived in Great Falls, Montana,</p> <p>21 Mahlstrom Air Force Base.</p> <p>22 Q. Nobody could fault you for moving from Great</p> <p>23 Falls, Montana.</p> <p>24 A. I miss it.</p> <p>25 Q. We are here about some calls to your cell</p>
<p>6</p> <p>1 Q. Great. Now, if you need to take a break, we</p> <p>2 can certainly do that. What I would like you to do is</p> <p>3 just tell me if I'm the person asking questions, "Hey, I</p> <p>4 need to take a break, stretch my legs, use the wash room,</p> <p>5 get more water," whatever it is. The only thing that I</p> <p>6 ask, could you tell me a couple of minutes in advance so</p> <p>7 I can finish what I'm talking about before we take our</p> <p>8 break?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Thank you. Is there anything about your</p> <p>11 physical condition or your mental condition that would</p> <p>12 make it difficult for you to sit here today for a couple</p> <p>13 of hours and answer questions about your lawsuit and the</p> <p>14 issues in your lawsuit?</p> <p>15 A. No, not at all.</p> <p>16 Q. Great. Do you take any prescription</p> <p>17 medications at all?</p> <p>18 A. Yes, sir, I do.</p> <p>19 Q. What do you take?</p> <p>20 A. Thyroid.</p> <p>21 Q. For your thyroid. How long have you taken</p> <p>22 thyroid.</p> <p>23 A. For the last two years.</p> <p>24 Q. Do you have a fast or slow thyroid?</p> <p>25 A. Oh, no, sir, it's slow.</p>	<p>8</p> <p>1 phone that as I understand it, you received in the summer</p> <p>2 of 2014; is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And is that your cell phone that ends in 4951?</p> <p>5 A. Yes.</p> <p>6 Q. And in the summer of 2014, who was your cell</p> <p>7 phone provider for the phone number that ended in 4951?</p> <p>8 A. Cricket.</p> <p>9 Q. And do you still have the cell phone that ends</p> <p>10 in 4951?</p> <p>11 A. Yes, sir, I do.</p> <p>12 Q. How long approximately before 2014 did you</p> <p>13 first have that cell phone number?</p> <p>14 A. I had the -- I got that number in March of</p> <p>15 2014.</p> <p>16 Q. From March 2014 up until today you have had</p> <p>17 that cell phone number?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Have you had any other cell phone numbers?</p> <p>20 A. Yes, sir.</p> <p>21 Q. I will come back to that in a second. Let's</p> <p>22 talk about the 4951. Ms. LaVigne, other than Cricket</p> <p>23 Wireless, has that cell phone number ever been one that</p> <p>24 you used with a different cell phone provider?</p> <p>25 A. No.</p>

<p style="text-align: right;">45</p> <p>1 you ask Cricket in writing or did you call somebody?</p> <p>2 A. I called their 611 information number.</p> <p>3 Q. The support number?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know who you talked to?</p> <p>6 A. No.</p> <p>7 Q. Did you ever follow-up and ask for that in</p> <p>8 writing?</p> <p>9 A. No. No, I didn't.</p> <p>10 Q. Maybe I asked this before and I apologize, I</p> <p>11 really do have a bad memory. It's because I write so</p> <p>12 poorly that sometimes I can't read those. Are you aware</p> <p>13 of anyone else who claims to have been called by this</p> <p>14 same number that you've identified was calling you, at</p> <p>15 any time?</p> <p>16 A. No.</p> <p>17 Q. Do you know anybody else like that?</p> <p>18 A. No, sir, I don't.</p> <p>19 Q. Anybody else told you they know somebody else</p> <p>20 who was called by that number?</p> <p>21 A. No, sir.</p> <p>22 Q. Prior to speaking to Sylvia -- by the way did</p> <p>23 you get Sylvia's last name?</p> <p>24 A. No, I did not.</p> <p>25 Q. When you spoke to Sylvia, did she tell you why</p>	<p style="text-align: right;">47</p> <p>1 and I haven't made any effort to try to track her down.</p> <p>2 In this neck of the woods it's a common name.</p> <p>3 Q. Both Belinda and Lucero?</p> <p>4 A. Yes.</p> <p>5 Q. So, when you spoke to Sylvia, she told you</p> <p>6 that the reason the bank representatives were calling you</p> <p>7 was because a woman named Belinda Lucero had listed your</p> <p>8 phone number as her contact number. Did I say that</p> <p>9 correctly?</p> <p>10 A. Yes.</p> <p>11 Q. What was your response to that? What did you</p> <p>12 tell Sylvia?</p> <p>13 A. That may be the number that Ms. Lucero has</p> <p>14 listed. As of March of 2014, that has been my personal</p> <p>15 phone number.</p> <p>16 Q. And what did Sylvia say in response to that?</p> <p>17 A. I asked her to take my number off their call</p> <p>18 list and quit calling, please.</p> <p>19 Q. Did she tell you she would do that?</p> <p>20 A. She said she would but the calls still</p> <p>21 continued.</p> <p>22 Q. My question was, did Sylvia tell you on that</p> <p>23 call that she would remove your number from the list?</p> <p>24 A. Yes.</p> <p>25 Q. You want to tell me that even after that call</p>
<p style="text-align: right;">46</p> <p>1 you were receiving the calls from the bank?</p> <p>2 A. She told me it was an attempt to collect a</p> <p>3 debt.</p> <p>4 Q. All right. Did she tell you why the calls</p> <p>5 were coming to your cell phone number?</p> <p>6 A. Apparently Ms. Lucero used that number when</p> <p>7 she acquired the debt.</p> <p>8 Q. Do you have any information -- by the way,</p> <p>9 that's something that Sylvia told you?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any information that that's not</p> <p>12 true or incorrect in any way?</p> <p>13 A. I have no way to verify that.</p> <p>14 Q. If the bank said, The reason we are calling</p> <p>15 your cell phone number is one of our customers listed</p> <p>16 that number as the number we could reach her," you would</p> <p>17 say, I don't know one way or the other whether that's</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Do you know Ms. Lucero?</p> <p>21 A. No.</p> <p>22 Q. Have you tried to track down who Belinda</p> <p>23 Lucero is to see if she might have had a different name</p> <p>24 which might be somebody you knew?</p> <p>25 A. I don't know of anybody named Belinda Lucero</p>	<p style="text-align: right;">48</p> <p>1 you received more calls from the same number?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall what time it was or the day when</p> <p>4 you spoke to Sylvia on July 23rd, 2015?</p> <p>5 A. Maybe a little bit after 8:00 because they</p> <p>6 would call me either 8:05, 8:06 or 8:07 in the morning.</p> <p>7 Q. Is that your guess based on when the calls</p> <p>8 came in or do you have a recollection of when you spoke</p> <p>9 to Sylvia?</p> <p>10 A. That's when the call came in and was logged by</p> <p>11 my phone.</p> <p>12 Q. Did you try to reach Sylvia or a supervisor</p> <p>13 back after July 23rd, 2015?</p> <p>14 A. No, I informed my legal counsel that the calls</p> <p>15 were continuing.</p> <p>16 Q. So, by then you had a lawyer?</p> <p>17 A. Yes.</p> <p>18 Q. When did you hire a lawyer?</p> <p>19 A. June of last year.</p> <p>20 Q. Okay. Did your lawyer or anyone else on your</p> <p>21 behalf contact the bank and ask that the calls stop?</p> <p>22 A. I assume Mr. Taylor wrote you guys a letter.</p> <p>23 Q. I'm sorry?</p> <p>24 A. I assume that you were notified by my legal</p> <p>25 counsel to quit calling, please.</p>

<p style="text-align: right;">49</p> <p>1 Q. Do you know when that supposedly occurred?</p> <p>2 A. No, sir.</p> <p>3 Q. In June of 2015, you hired a lawyer because</p> <p>4 you were upset about the fact that you were receiving</p> <p>5 calls for Belinda Lucero, even though you asked that they</p> <p>6 stop. Did I say that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Is it the lawyer sitting next to us?</p> <p>9 A. Yes.</p> <p>10 Q. How did you find him?</p> <p>11 A. On the Internet.</p> <p>12 Q. I don't want to get into any legal advice, but</p> <p>13 the reason you hired him was because you were getting</p> <p>14 calls that you didn't want to get on your cell phone and</p> <p>15 you wanted them to stop, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Back to my question. After June of 2015 and</p> <p>18 before filing a lawsuit. Are you aware of anything</p> <p>19 anyone did, including your lawyer, to try to get the</p> <p>20 calls to stop?</p> <p>21 A. No, sir, I'm not aware.</p> <p>22 Q. But that's first and foremost when you hired a</p> <p>23 lawyer, the get the calls to stop, right?</p> <p>24 A. Yes.</p> <p>25 Q. So, as of the time you spoke to Sylvia you</p>	<p style="text-align: right;">51</p> <p>1 take over at that point?</p> <p>2 Q. I don't know and I can't answer your</p> <p>3 questions. I might have an opinion that is different</p> <p>4 from yours or your attorney's so it really wouldn't</p> <p>5 matter. My question was -- just explain to me. You are</p> <p>6 on the phone with a lady who you are asking to help get</p> <p>7 the calls to stop, right?</p> <p>8 A. Correct.</p> <p>9 Q. That's the purpose to try to get the calls to</p> <p>10 stop, right?</p> <p>11 A. Yes.</p> <p>12 Q. By then you had already consulted with a</p> <p>13 lawyer to try to get them to help get the calls to stop?</p> <p>14 A. Yes.</p> <p>15 Q. But the calls hadn't stopped even when you</p> <p>16 hired a lawyer to do that very thing, right?</p> <p>17 A. Correct.</p> <p>18 Q. My question is, you chose not to tell Sylvia</p> <p>19 that you hired a lawyer for that purpose, right?</p> <p>20 A. I didn't tell her.</p> <p>21 Q. That's right and my question, why did you</p> <p>22 choose not to do that?</p> <p>23 MR. TAYLOR: Objection.</p> <p>24 A. I don't know.</p> <p>25 MR. HELFAND: What is the form</p>
<p style="text-align: right;">50</p> <p>1 already had a lawyer who was to help you get the calls to</p> <p>2 stop, right?</p> <p>3 MR. TAYLOR: Objection.</p> <p>4 A. I don't recall.</p> <p>5 Q. (By Mr. Helfand) You spoke to Sylvia on July</p> <p>6 23rd, that's after June of 2015, right?</p> <p>7 A. Yes, I did speak to her.</p> <p>8 Q. So, as of July 23rd you had already hired a</p> <p>9 lawyer with the hope of getting the calls to stop when</p> <p>10 you spoke to Sylvia, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Did you tell Sylvia that you had a lawyer?</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 MR. TAYLOR: Objection.</p> <p>16 A. She wasn't interested.</p> <p>17 Q. (By Mr. Helfand) You don't know what she was</p> <p>18 interested in. My question is, did you tell her you had</p> <p>19 a lawyer? You told me you did not, right?</p> <p>20 A. I did not tell her.</p> <p>21 Q. Why did you choose not to tell her that?</p> <p>22 A. We weren't sure what company you were.</p> <p>23 Q. What difference did it make what company you</p> <p>24 were with to tell somebody you have a lawyer?</p> <p>25 A. Don't you have to let legal representation</p>	<p style="text-align: right;">52</p> <p>1 objection?</p> <p>2 MR. TAYLOR: Argumentative.</p> <p>3 MR. HELFAND: I'm not sure you</p> <p>4 understand what argumentative means.</p> <p>5 MR. TAYLOR: She answered your</p> <p>6 question.</p> <p>7 MR. HELFAND: Argumentative means</p> <p>8 making your argument through the witness.</p> <p>9 MR. TAYLOR: I stated my objection,</p> <p>10 counsel.</p> <p>11 MR. HELFAND: Yes, you have.</p> <p>12 Q. (By Mr. Helfand) It says in paragraph 20 of</p> <p>13 your lawsuit, "The cell phone number called by defendant</p> <p>14 was and is assigned to a cellular telephone service for</p> <p>15 which the plaintiff incurred charges for incoming calls."</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. But that's not true, is it, Ms. LaVigne? You</p> <p>19 do not incur a charge for incoming calls, do you?</p> <p>20 MR. TAYLOR: Objection.</p> <p>21 A. No, I don't.</p> <p>22 MR. HELFAND: What's the objection?</p> <p>23 MR. TAYLOR: That's not correct.</p> <p>24 That's not what she testified to.</p> <p>25 MR. HELFAND: Actually that is what</p>